

# Senate Study Bill 3076

SENATE/HOUSE FILE \_\_\_\_\_  
BY (PROPOSED DEPARTMENT OF  
INSPECTIONS AND APPEALS  
BILL)

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

## A BILL FOR

1 An Act relating to providing legal representation to an eligible  
2 indigent person and the appointment of a guardian ad litem.  
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:  
4 TLSB 5472DP 82  
5 jm/rj/5

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1 1 Section 1. Section 13B.4, subsection 2, Code Supplement  
1 2 2007, is amended to read as follows:  
1 3 2. The state public defender shall file a notice with the  
1 4 clerk of the district court in each county served by a public  
1 5 defender designating which public defender office shall  
1 6 receive notice of appointment of cases. The state public  
1 7 defender may also designate a nonprofit organization which has  
1 8 a contract with the state public defender to provide legal  
1 9 services to eligible indigent persons ~~prior to July 1, 2004.~~  
~~1 10 Except as otherwise provided, in, In each county in which the~~  
1 11 state public defender files a designation, the state public  
1 12 defender's designee shall be appointed by the court to  
1 13 represent all eligible ~~indigents~~ persons or to serve as  
~~1 14 guardian ad litem for eligible children in juvenile court in~~  
1 15 all ~~of the~~ cases and proceedings specified in the designation.  
1 16 The appointment shall not be made if the state public defender  
1 17 notifies the court that the ~~state public defender~~ defender's  
1 18 designee will not provide ~~legal representation services~~ in  
1 19 certain cases as identified in the designation by the state  
1 20 public defender.  
1 21 Sec. 2. Section 13B.9, subsection 1, paragraph c, Code  
1 22 2007, is amended by striking the paragraph and inserting in  
1 23 lieu thereof the following:  
1 24 c. Serve as guardian ad litem for each child in all cases  
1 25 in which the local public defender office is the state public  
1 26 defender's designee. The local public defender shall be  
1 27 responsible for determining who shall perform the duties of  
1 28 the guardian ad litem as defined in section 232.2 and shall be  
1 29 responsible for assuring the court that the duties of the  
1 30 guardian ad litem have been fulfilled.  
1 31 Sec. 3. Section 814.11, subsection 2, Code 2007, is  
1 32 amended to read as follows:  
1 33 2. If the appeal involves an indictable offense or denial  
1 34 of postconviction relief, the appointment shall be made to the  
1 35 state appellate defender unless the state appellate defender  
2 1 ~~is unable to handle~~ withdraws from the case due to a conflict  
2 2 of interest or because of a temporary overload of cases.  
2 3 Sec. 4. Section 814.11, Code 2007, is amended by adding  
2 4 the following new subsection:  
2 5 NEW SUBSECTION. 2A. In a juvenile proceeding the trial  
2 6 attorney representing the juvenile shall be responsible for  
2 7 filing any petition on appeal.  
2 8 Sec. 5. Section 814.11, subsections 3 and 4, Code 2007,  
2 9 are amended to read as follows:  
2 10 3. If the appeal is other than an indictable offense or  
2 11 denial of postconviction relief, including juvenile cases in  
~~2 12 which a full brief is required or ordered,~~ or if the state  
2 13 appellate defender is unable to handle the case, the court  
2 14 shall appoint an attorney who has a contract with the state  
2 15 public defender to handle such an appeal.  
2 16 4. If the court determines that no contract attorney is  
2 17 available to handle the appeal, the court may appoint a  
2 18 noncontract attorney, if the state public defender consents to

2 19 ~~the appointment of the noncontract attorney.~~ The order of  
2 20 appointment shall include a specific finding that no contract  
2 21 attorney ~~was is~~ available and the state public defender  
2 22 consents to the appointment.

2 23 Sec. 6. Section 815.10A, subsection 2, Code 2007, is  
2 24 amended to read as follows:

2 25 2. Claims for compensation and reimbursement submitted by  
2 26 an attorney appointed after June 30, 2004, are not considered  
2 27 timely unless the claim is submitted to the state public  
2 28 defender within forty-five days of ~~the a withdrawal order,~~  
2 29 sentencing, acquittal, or dismissal of, whichever is earliest,  
2 30 in a criminal case or the withdrawal order, final ruling, or  
2 31 dismissal of, whichever is earliest, in any other type of  
2 32 case.

2 33 Sec. 7. Section 815.11, Code Supplement 2007, is amended  
2 34 to read as follows:

2 35 815.11 APPROPRIATIONS FOR INDIGENT DEFENSE == FUND  
3 1 CREATED.

3 2 Costs incurred for legal representation by a  
3 3 court-appointed attorney under chapter 229A, 665, 822, or 908,  
3 4 or section 232.141, subsection 3, paragraph "d", or section  
3 5 598.23A, 600A.6B, 814.9, 814.10, 814.11, 815.4, 815.7, or  
3 6 815.10 on behalf of an indigent shall be paid from moneys  
3 7 appropriated by the general assembly to the office of the  
3 8 state public defender in the department of inspections and  
3 9 appeals and deposited in an account to be known as the  
3 10 indigent defense fund. Costs incurred by a court-appointed  
3 11 attorney representing an indigent defendant in a contempt  
3 12 ~~action, or representing an indigent juvenile in a juvenile~~  
3 13 ~~court proceeding under chapter 600,~~ are also payable from the  
3 14 fund. However, costs incurred in any administrative  
3 15 proceeding or in any other proceeding under this chapter or  
3 16 chapter 598, 600, 600A, 633, 633A, 814, or 915 or other  
3 17 provisions of the Code or administrative rules are not payable  
3 18 from the fund.

#### 3 19 EXPLANATION

3 20 This bill relates to providing legal representation to an  
3 21 eligible indigent person and to the appointment of a guardian  
3 22 ad litem.

3 23 The bill authorizes the state public defender to contract  
3 24 with additional nonprofit organizations to provide legal  
3 25 services to eligible indigent persons.

3 26 The bill strikes provisions requiring the local public  
3 27 defender to make an annual report to the state public  
3 28 defender. The bill also requires the local public defender to  
3 29 serve as guardian ad litem for each child in all cases in  
3 30 which the local public defender office is the state public  
3 31 defender's designee. The bill also provides that the local  
3 32 public defender shall be responsible for determining who shall  
3 33 serve as the guardian ad litem and shall be responsible for  
3 34 assuring the court that the duties of the guardian ad litem  
3 35 have been fulfilled.

4 1 The bill provides that the state appellate defender shall  
4 2 be appointed to represent an indigent person on appeal unless  
4 3 the state appellate defender withdraws from the case.

4 4 The bill makes the trial attorney representing a juvenile  
4 5 in juvenile court responsible for filing any petition on  
4 6 appeal.

4 7 In appeals from juvenile court where a full brief is  
4 8 required or ordered, the bill requires the court to appoint an  
4 9 attorney who has a contract with the state public defender if  
4 10 the state appellate defender is unable to handle the case.

4 11 If the court determines that no contract attorney is  
4 12 available to handle an appeal, the court may appoint a  
4 13 noncontract attorney to handle the appeal, if the state public  
4 14 defender consents to the appointment.

4 15 Under the bill, a claim for compensation and reimbursement  
4 16 for representation of an indigent person in a case is not  
4 17 timely unless the claim is filed within 45 days of the  
4 18 withdrawal order, sentencing, acquittal, or dismissal,  
4 19 whichever is earliest, in a criminal case, or the withdrawal  
4 20 order, final ruling, or dismissal, whichever is earliest, in  
4 21 any other type of case.

4 22 The bill strikes the provision from Code section 815.11  
4 23 which permits payments from the indigent defense fund to an  
4 24 attorney representing a juvenile in an adoption proceeding  
4 25 pursuant to Code chapter 600.

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4 27 jm/rj/5.1